

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

UNITED STATES OF AMERICA

v.

DEBORAH M. PELLETIER, et al.,

Defendants

Criminal No. 96-76-P-C

GENE CARTER, District Judge

ORDER DENYING DEFENDANT PELLETIER'S MOTION TO DISMISS

Now before the Court are Defendant Deborah Pelletier's Motion to Dismiss (Docket No. 25) and the Government's Objection to Defendant's Motion to Dismiss (Docket No. 31). Defendant argues that Counts Two and Three of the Indictment<sup>1</sup> should be

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<sup>1</sup>Count Two charges that the Defendant Pelletier

knowingly sold and disposed of a firearm . . . to James Cruz, knowing and having reasonable cause to believe that James Cruz was then an unlawful user of a controlled substance as defined in Title 21, United States Code, Section 802, and did aid and abet the same;

All in violation of Title 18, United States Code, Sections 2, 922(d)(3) and 924(a)(2).

Count Three charges that Defendant Pelletier

being [an] unlawful use[r] of controlled substances, knowingly possessed in and affecting commerce a firearm . . . and did aid and abet the same;

All in violation of Title 18, United States Code, Sections 2, 922(g)(3), and 924(a)(2).

See Superceding Indictment (Docket No. 15) at 2.

dismissed as to her on the grounds that the statutes under which she is charged<sup>2</sup> are unconstitutionally vague and were enacted by Congress in violation of its powers under the Commerce Clause. The Court will reserve its ruling on the issue of vagueness.<sup>3</sup> To the extent that Defendant's motion asserts a violation of the

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<sup>2</sup>Specifically, Defendant challenges the constitutionality of 18 U.S.C. § 922(d)(3), which states, in relevant part, that:

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm . . . to any person knowing or having reasonable cause to believe that such person--

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

Defendant also challenges 18 U.S.C. § 922(g)(3), which states, in relevant part, that:

(g) It shall be unlawful for any person--

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm . . . or to receive any firearm . . . which has been shipped or transported in interstate or foreign commerce.

18 U.S.C.A. §§ 922(d)(3), 922(g)(3)(West 1976 & Supp. 1997).

<sup>3</sup>In conducting a vagueness inquiry, a court must examine the challenged statutes as applied to the specific facts of the case before the court. Maynard v. Cartwright, 486 U.S. 356, 361 (1988) (citing United States v. Powell, 423 U.S. 87, 92-93 (1975)). Since the Court has not yet had the opportunity to hear evidence in this case, the Court will reserve ruling upon this aspect of the motion.

Commerce Clause, the Court will, for the reasons stated below, deny the motion.

Defendant seeks dismissal of Counts Two and Three on the grounds that Congress exceeded its powers under the Commerce Clause in enacting 18 U.S.C. §§ 922(d)(3) and 922(g)(3). Relying upon United States v. Lopez, 115 S. Ct. 1624 (1995), Defendant asserts that the two statutes are unconstitutional because section 922(d)(3) lacks an express jurisdictional element and because the conduct prohibited by section 922(g)(3) does not substantially affect interstate commerce. The Court disagrees with Defendant's analysis and concludes that both sections 922(d)(3) and 922(g)(3) are constitutional under the Commerce Clause.

First, the Court is persuaded that section 922(d)(3) is distinguishable from the statute invalidated in Lopez. 115 S. Ct. 1624. In that case, the United States Supreme Court held that a statute making it a federal offense to possess a firearm within a school zone was unconstitutional. The Court stated that

[t]he possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce. . . . [T]here is no indication that [respondent] had recently moved in interstate commerce, and there is no requirement [in the statute] that his possession of a firearm have any concrete tie to interstate commerce.

Id. at 1634. In this case, in contrast, section 922(d)(3) regulates economic activities -- namely, the sale or disposition of firearms to unlawful users of controlled substances. The Court is satisfied, based upon the legislative history and caselaw pertaining to this statutory provision, that these activities substantially affect interstate commerce. As the Government points out, Congress has made specific findings that

The principle purposes of title IV [(State Firearms Control Assistance)] are to aid in making it possible to keep firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency. . . .

The ready availability . . . with which any person can anonymously acquire firearms (including . . . narcotic addicts . . . and others whose possession of firearms is similarly contrary to the public interest) is a matter of national concern. . . .

Only through adequate Federal control over interstate and foreign commerce in firearms, and over all persons engaging in the business of importing, manufacturing or dealing in firearms, can this problem be dealt with, and effective State and local regulation of the firearms traffic be made possible.

S. Rep. No. 90-1097 (1968), reprinted in 1968 U.S.C.C.A.N. 2112, 2114. Furthermore, the Court of Appeals for the First Circuit has stated clearly that Congress has the power to regulate interstate drug activity. See United States v. Zorrilla, 93 F.3d 7, 8 (1st Cir. 1996) ("[D]rug trafficking is precisely the kind of economic enterprise that substantially affects interstate commerce and that, therefore, comes within Congress's

regulatory power under the Commerce Clause"); see also United States v. Lerebours, 87 F.3d 582, 584 (1st Cir. 1995). The Court concludes that Congress acted within its powers under the Commerce Clause when it enacted section 922(d)(3) to regulate the sale or disposition of firearms to unlawful users of controlled substances, activities which occur within the compass of both the trade in firearms and that in narcotics.

Second, the Court is persuaded that section 922(g)(3), which regulates possession of firearms by unlawful users of controlled substances, is constitutional. Unlike the statute invalidated in Lopez, section 922(g)(3) contains an express jurisdictional element requiring the government to allege and prove that the possession of the firearm was "in or affecting commerce." See 18 U.S.C.A. § 922(g)(3), supra, footnote 2. The First Circuit recently upheld the constitutionality of section 922(g)(1), an analogous statutory provision, holding that "922(g)(1) contains a specific jurisdictional element which ensures, through case-by-case inquiry, that the firearm possession in question affects interstate commerce. Where, as here, the jurisdictional element is present, the government need only prove [a] minimal nexus to interstate commerce. . . ." United States v. Smith, 101 F.3d 202, 215 (1st Cir. 1996).<sup>4</sup> Moreover, another district court

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<sup>4</sup>In Scarborough v. United States, 431 U.S. 563 (1977), the United States Supreme Court held that the government's burden of demonstrating that the firearm was "in commerce or affecting commerce" was satisfied by a showing that the possessed firearm had at some point traveled in interstate commerce. Id. at 575.

confronting this issue has upheld the constitutionality of section 922(g)(3). United States v. Bramble, 894 F. Supp. 1384 (D. Haw. 1995), aff'd, 103 F.3d 1475 (9th Cir. 1996) (denying motion to dismiss on Commerce Clause grounds with respect to 18 U.S.C. §§ 922(g)(1) and 922(g)(3)). The Court is satisfied that section 922(g)(3) contains the same safeguard as section 922(g)(1) and is, therefore, constitutional, notwithstanding the holding in Lopez.

The Court thus rejects the Defendant's Commerce Clause challenge to the constitutionality of the two statutes. Accordingly, Defendant's Motion to Dismiss, on Commerce Clause grounds, is hereby DENIED. The Court reserves its ruling on Defendant's challenge to sections 922(d)(3) and 922(g)(3) on vagueness grounds until trial.

So ORDERED.

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GENE CARTER  
District Judge

Dated at Portland, Maine this 17th day of March, 1997.